89- 1378

No.

FILED
FEB 20 1990
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

AVRAM MACY KLAVAN, PETITIONER

v.

GARRIE JOAN KLAVAN, RESPONDENT

Petition For a Writ of Certiorari
To The Supreme Judicial Court
Of Massachusetts

ARTHUR R. MILLER
1563 Massachusetts Ave.
Cambridge, MA 02138

ALAN S. GEISMER, JR.
MARK RODER
Kassler & Feuer
85 Devonshire Street
Boston, MA 02109

KENNETH S. GELLER
Counsel of Record
EVAN M. TAGER
Mayer, Brown & Platt
2000 Penn. Ave., N.W.
Washington, D.C. 20006
(202) 778-0613

Counsel for Petitioner

---

48 pp

QUESTION PRESENTED

Whether a state court, consistent with due process, may assert personal jurisdiction over a non-resident defendant whose sole contact with the state was a single visit during which he was served with process.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	I
OPINIONS BELOW	1
JURISDICTION	2
STATEMENT	2
REASONS FOR GRANTING THE PETITION	7
CONCLUSION	11
APPENDIX A	1a
APPENDIX B	7a
APPENDIX C	8A
APPENDIX D	10A

TABLE OF AUTHORITIES

Cases:

Burnham v. California Superior Court, No. 89-44, cert. granted, 110 S. Ct. 47 (1989).....9-11

Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985).....7-8

Hanson v. Denckla, 357 U.S. 235 (1958)..... 8

International Shoe Co. v. Washington, 326 U.S. 310 (1945)..... 8

Table of Authorities --
Continued

Page

Statutes:

Mass. Gen. L. ch. 223A,
§ 3(g)..... 5

IN THE SUPREME COURT OF
THE UNITED STATES

OCTOBER TERM, 1989

No.

AVRAM MACY KLAVAN, PETITIONER

v.

GARRIE JOAN KLAVAN, RESPONDENT

**Petition For A Writ Of Certiorari
To The Supreme Judicial Court
Of Massachusetts**

Avram Macy Klavan petitions for a writ of certiorari to review the judgment of the Supreme Judicial Court of Massachusetts in this case.

OPINIONS BELOW

The opinion of the Supreme Judicial Court of Massachusetts (App., infra, 1a-6a), the oral ruling of the Massachusetts

Probate and Family Court denying the motion to dismiss for lack of personal jurisdiction (id. at 8a-9a), and the final decision of the Probate and Family Court (id. at 10a-33a) are unreported.

JURISDICTION

The judgment of the Supreme Judicial Court of Massachusetts was entered on October 18, 1989 (App., infra, 1a), and the order denying the petition for rehearing was issued on November 30, 1989 (id. at 7a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

STATEMENT

This is a divorce action brought in the Commonwealth of Massachusetts, the wife's state of residence, against petitioner, her non-resident husband. Petitioner's only contact with the state was a single visit made at his wife's request during which he was served with

process. Petitioner contends that the Supreme Judicial Court of Massachusetts erred in holding that the state court's assertion of personal jurisdiction over him comports with the Due Process Clause of the Fourteenth Amendment.

1. Petitioner married respondent in New York in 1966. The couple lived in Vermont for most of the duration of their marriage. They began experiencing marital problems in 1981. In 1983, petitioner moved from Vermont to Alaska. Respondent remained in Vermont until 1985, when she moved to Massachusetts. App., infra, 1a-2a.

On or about August 6, 1986, petitioner travelled to New York to visit his ailing mother. Shortly after arriving in New York, he spoke to respondent by telephone. Petitioner proposed that they meet in Vermont in an effort to

reach a divorce settlement. Respondent asked petitioner to come to Massachusetts instead. He declined. After respondent "became hysterical and screamed that [petitioner] had to come to Boston so that [they] could talk," petitioner acquiesced and thereafter advised respondent of his flight plans. When petitioner stepped off the plane at Logan Airport in Boston on August 14, he was served with a summons and complaint for divorce. App., infra, 2a-3a.

2. Petitioner filed a special appearance and a motion to dismiss in the Massachusetts Probate and Family Court. The motion, accompanied by petitioner's uncontroverted affidavit, asserted that Massachusetts lacked personal jurisdiction over him. Petitioner contended, and respondent did not contest, that the Massachusetts long-arm statute did not

confer jurisdiction over petitioner, because Massachusetts did not serve as "the marital domicile of both parties * * * for at least one year within the two years immediately preceding the commencement of the action." Mass. Gen. L. ch. 223A, § 3(g). Petitioner further argued that in light of respondent's hidden motive in imploring petitioner to come to Boston, service of process on petitioner when he arrived in the Commonwealth was not an adequate basis for personal jurisdiction either.

The Probate and Family Court denied the motion to dismiss from the bench without stating its reasons. It proceeded to try the divorce action and entered a judgment of divorce nisi on February 10, 1988, dividing the marital assets and awarding alimony. App., infra, 10a-33a.

Petitioner then appealed the denial of the motion to dismiss to the Appeals Court of the Commonwealth of Massachusetts. In his opening brief, petitioner again pointed out -- and respondent again did not dispute -- that he lacked sufficient minimum contacts with Massachusetts to justify the Commonwealth's exercise of personal jurisdiction under the long-arm statute. Appellant's Br. 6-7 & n.2. Petitioner also again argued that jurisdiction could not be predicated on service of process during a single trip to Massachusetts taken as a result of respondent's deceptive request. Id. at 12, 15-16. Respondent responded by asserting that the Massachusetts courts had personal jurisdiction over petitioner simply "as a result of [his] being served while in the Commonwealth." Appellee's Br. 4.

After briefing, the Supreme Judicial Court transferred the case to its own docket and heard argument. Expressly finding that respondent had not tricked petitioner into coming to Massachusetts, and implicitly holding that service of process is enough to justify assertion of personal jurisdiction, the Supreme Judicial Court affirmed the denial of the motion to dismiss. App., infra, 1a-6a.

REASONS FOR GRANTING THE PETITION

This Court has repeatedly held that "[t]he Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.'" Burger King Corp. v. Rudzewicz, 471 U.S. 462, 471-472 (1985), quoting International Shoe Co. v. Washington, 326 U.S. 310, 319 (1945). Accordingly, to be

subject to the jurisdiction of a state's courts, a person must have "purposefully avail[ed himself] of the privilege of conducting activities within" that state. Hanson v. Denckla, 357 U.S. 235, 253 (1958). "This 'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts, or of the 'unilateral activity of another party or a third person.'" Burger King, 471 U.S. at 475 (citations omitted).

In this case, the Massachusetts courts asserted personal jurisdiction over petitioner based solely upon the fact that he was served with process during a single visit to the Commonwealth. It is undisputed that petitioner had never transacted any business in Massachusetts, had never lived in the

Commonwealth, and, other than a single vacation with respondent in the early years of their marriage, had never "purposefully availed himself" of the privilege of conducting any activities in the Commonwealth. The case thus starkly raises the issue of whether service of process by itself is sufficient to satisfy the constitutional requirement that states refrain from exercising jurisdiction over persons that have not established meaningful "contacts, ties, or relations" there.

That very issue is currently before the Court in Burnham v. California Superior Court, No. 89-44, which is scheduled for argument on February 28, 1990. In Burnham, this Court will determine whether the California courts may exercise personal jurisdiction over a husband who was served with process during one of

his occasional trips to California to visit his children (who were living with his wife there). A holding that service of process is not by itself sufficient to justify the exercise of personal jurisdiction would be dispositive of the instant petition. */ For that reason, the

---

*/ Indeed, this is an even stronger case than Burnham for holding that due process is not satisfied by the mere service of process. In Burnham, the nonresident defendant was physically present in the forum state on several occasions, for business and personal reasons, both before and after the service of process. Furthermore, Mr. Burnham allegedly helped to relocate his wife and children in California, knowing that divorce proceedings were contemplated. Here, by contrast, petitioner visited Massachusetts only once in the last two decades, when respondent demanded that he come to Boston rather than Vermont to discuss their marital problems, and respondent and her children moved to Massachusetts without the consent or assistance of petitioner.

petition in this case should be held for disposition in light of the Court's decision in Burnham.

CONCLUSION

The petition for a writ of certiorari should be held and disposed of as appropriate in light of the Court's decision in Burnham v. California Superior Court, No. 89-44.

Respectfully submitted.

ARTHUR R. MILLER
1563 Massachusetts Ave.
Cambridge, MA 02138

KENNETH S. GELLER
Counsel of Record
EVAN M. TAGER
Mayer, Brown & Platt
2000 Penn. Ave., N.W.
Washington, D.C. 20006
(202) 778-0613

ALAN S. GEISMER, JR.
MARK RODER
Kassler & Feuer
85 Devonshire Street
Boston, MA 02109

FEBRUARY 1990

APPENDIX A

N-5067 S.J.C.

GARRIE JOAN KLAVAN
vs. AVRAM MACY KLAVAN,

October 18, 1989.

Practice, Civil, Service of process.

Avram Macy Klavan (husband) appeals from a judgment of divorce from Garrie Joan Klavan (wife) on the ground that the Probate and Family Court for Norfolk County lacked personal jurisdiction over him. He claims that service on him was invalid because it was obtained through the fraud and deceit of the wife. We transferred the case to this court on our own motion. We affirm.

The parties were married in New York in 1966. They resided in Vermont for most of the duration of the marriage. After marital difficulties surfaced in 1983, the husband moved from Vermont to

Alaska. The wife moved to Massachusetts in 1985. The parties saw each other from time to time and made various unsuccessful efforts at reconciliation. The parties also discussed divorce. According to the husband's affidavit, he travelled to New York on or about August 6, 1986, and spoke by telephone to the wife at some time after his arrival. The husband wanted to meet the wife in Vermont; she wanted him to come to Boston. When he refused, according to his affidavit, "She became hysterical and screamed that I had to come to Boston so that we could talk." The husband then agreed to come to Boston.

On August 13, 1986, the wife filed a complaint for divorce, dated August 8. On August 14, when the husband arrived at Logan International Airport, he was served with the complaint for divorce and

a summons. The husband filed a special appearance and a motion to dismiss the complaint for lack of personal jurisdiction. The trial judge denied the motion. A judgment of divorce nisi entered on February 10, 1988. The sole issue on appeal is whether the judge erred in denying the husband's motion to dismiss for lack of personal jurisdiction.

Although we have not yet ruled whether service of process should be set aside if a person has been induced by fraud or trickery to come within the jurisdiction of a Massachusetts court for the purpose of procuring service on him, other courts have set aside such service of process. See, e.g., Commercial Mut. Accident Co. v. Davis, 213 U.S. 245, 256 (1909); Coyne v. Grupo Indus. Trieme, S.A. de C.V., 105 F.D.R. 627, 629 (D.D.C. 1985); E/M Lubricants, Inc. v. Microfral,

S.A.R.L., 91 F.R.D. 235, 236-238 (N.D. Ill. 1981); Willametz v. Susi, 54 F.R.D. 463, 464-465 (D. Mass. 1972). See generally Annot., Attack on Personal Service As Having Been Obtained By Fraud or Trickery, 98 A.L.R.2d 551 (1964).

If we were to recognize the doctrine of fraudulent enticement, it would not aid the husband. The husband's affidavit does not set forth any fraudulent action, representation, or statement by the wife that was relied on by the husband. See, e.g., Willametz, supra at 464-465; E/M Lubricants, Inc., supra at 237-238. The husband's affidavit asserts that the wife "became hysterical and screamed." Those facts do not constitute a representation of any kind, let alone fraud, trickery, or fraudulent representation.

The husband argues that the "deceit lies in the Wife's failure to disclose

that she would serve [him] with process upon his arrival in Massachusetts." We disagree. Silence is deceitful only where circumstances give rise to a duty to speak, and such duty is imposed only "where the defrauding party has made statements which are subsequently found to be inaccurate and where he knows or should know that the other party is relying on the inaccurate statements." E/M Lubricants, Inc., supra at 237, and cases cited. Hysteria and screaming does not describe an inaccurate statement. Thus, the wife was under no duty to disclose any service that may have been impending. 1/

1/ Alternately, the husband relies on a number of cases holding that fraudulent enticement exists where the defrauding party induced the other party to enter the jurisdiction by agreeing to discuss a settlement. See, e.g., E/M Lubricants, Inc., supra at 237 (finding the defendant's president offered to enter the jurisdiction for the sole purpose of negotiating a settlement); Coyne, supra at

(Cont'd)

On appeal, the wife asks for attorney's fees. That motion is remanded to the Probate and Family Court where such fees may be allowed in the judge's discretion. The judgment of divorce is affirmed.

So ordered.

Alan S. Geismer, Jr., for Avram Macy Klavan. Jay S. Gregory for Garrie Joan Klavan.

---

628 (during the weeks preceding the filing of his suit, the plaintiff repeatedly urged the defendant's representative to enter the jurisdiction to settle their dispute). Here, the wife merely asked the husband to come to Boston to talk -- the husband's affidavit does not disclose whether they were to discuss a "settlement," a divorce, or a reconciliation. The record clearly shows that in the months prior to service, the couple met twice, in Alaska and Vermont, in an effort to reconcile. No divorce proceedings were pending in any jurisdiction and "[n]o mention was made of divorce" during the telephone conversation. Therefore, there is no evidence that the wife agreed to settlement negotiations, and the husband's reliance on those cases is misplaced.

APPENDIX B

SUPREME JUDICIAL COURT FOR
THE COMMONWEALTH

ROOM 1412 COURT HOUSE

BOSTON, MASSACHUSETTS 02108

(617) 725-8086

JEAN M. KENNETI
Clerk

FREDERICK J. QUINLAN
Assistant Clerk

November 30, 1989

Alan S. Geismer, Jr., Esq.
KASSLER AND FEUER
85 Devonshire Street
Boston, MA 02109

Dear Attorney Geismer:

Re: SJC-5067
GARRIE JOAN KLAVAN vs.
AVRAM MACY KLAVAN

Your Petition for Rehearing of the above-captioned appeal has been considered by the Court and was denied.

Very truly yours,
/s/
Jean M. Kennett,
Clerk

cc: Jay S. Gregory, Esquire
POSTERNAK, BLANKSTEIN & LUND
100 Charles River Plaza
Boston, MA 02114

APPENDIX C

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

Probate Court
Dedham Division
No. 86D1093-D1

Klavan

vs

Klavan

Atty. for
Garrie Klavan: Peter Zupcofska, Esq.

Atty. for
Avram Klavan: Paul M. Kane, Esq.
McGrath & Kane
4 Longfellow Place
Boston, MA 02114
(617) 523-5600

Judge

On the Motion to Dismiss, I have in fact read the Motion and both submissions....

Atty

Then I will rest on the Motions and the affidavit.

Judge

I will be happy to hear your argument if you wish to, if you want to say anything further on it.

Atty

No, I think that's all set out there and the Court has indicated that it has read the appropriate pleadings.

Judge

Well, I am going to deny the Motion to Dismiss. Now, there's a Motion for a financial statement. Is your client with you today?

APPENDIX D

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS. PROBATE & FAMILY COURT
NO. 86D 1093-D1

GARRIE JOAN KLAVAN,
Plaintiff

vs.

AVRAM MACY KLAVAN,
Defendant

MEMORANDUM, FINDINGS AND ORDER

This is a Complaint for Divorce filed by Garrie Joan Klavan (Garrie) against Avram Macy Klavan (Avram) on the grounds of cruel and abusive treatment and irretrievable breakdown of the marriage. Plaintiff at the time of the divorce sought custody of two minor children, Arnie and Michael. The plaintiff is also seeking a division of the assets under Massachusetts General Laws, Chapter 208, Section 34. The case was originally heard on June 4, 1987.

However, a mistrial was declared and the case recommenced on September 14, 1987. It was also heard on September 15th, 16th and 17th, 1987 followed by a hearing on a contempt on November 10, 1987. All matters were transcribed, however, the stenographer did not make the transcript available to the Court after repeated requests. The Court has proceeded on the basis of one transcript and its notes.

MEMORANDUM

The parties were married in New York on May 29, 1966. It was the first marriage for each. Two children were born of the marriage: Arnie, who is now 20 years old and in excellent health, and Michael, who is 18 years old and also in excellent health. At the time of the hearing Arnie was living with her mother in Brookline, Massachusetts, and Michael

was living with his father in Anchorage, Alaska, where he was a freshman at the University of Alaska. At the time of the marriage the wife was a student at a community college in New York majoring in liberal arts. Avram was an airman third class in the Air Force. The parties moved to Biloxi, Mississippi, where Avram was stationed. Shortly thereafter, they moved to an Air Force base in Plattsburgh, New York, where Avram had been transferred. While at Plattsburgh, Garrie worked until she was seven (7) months pregnant and her funds were used for family purposes. Avram was discharged from the Air Force in February of 1968. The family now consisting of Garrie, Avram and Arnie, moved to Potsdam, New York, where they lived in a mobile home and where Avram completed a semester at Potsdam College and where,

after Arnie was born, Garrie continued to work. Shortly thereafter, Avram went to work for IBM in Vermont and the parties moved to Burlington, Vermont. Avram, while working as an Associate Engineer, continued his education and received an Associates Degree in business and economics. (Michael was born in November of 1968 while Avram was at Clarkson University in Potsdam). Sometime in 1969 the parties purchased the home in Burlington. As the family grew, Garrie became a housekeeper; cleaning, sewing, making curtains, bedspreads, painting and taking care of the children. She also worked for a year when Michael became of school age. She returned to school for a short time and commenced work again in November 1975 as a Court reporter. She was heavily involved in the mid 1970's in activities involving her children and in

community activities. She was principal of the local Hebrew school for a period and had administrative duties.

During the early years the parties lived in Vermont they had a normal social life, entertained, had family and friends over for dinner and took vacations together visiting Sturbridge, Massachusetts, and Montreal, cruising in Maine, trips to New York City and Florida. Their house was a meeting place for friends and family.

Garrie is approximately 41 years old and Avram is approximately 42 years old. Although Avram's health is excellent, Garrie's health is a cause for some concern. In 1972 she had a gallbladder operation with a difficult recovery, during which she experienced pain in her spine and down her right side which made housework difficult. She ended up doing

some shopping and Avram did help some with the housework. She depended on the children for assistance. About three years later she experienced a change in her voice -- it became deeper -- and the development of excessive body and facial hair. She did not receive treatment until early in 1982 at which time she had an adrenal tumor removed. She was hospitalized for this treatment for about ten (10) days in March of 1982. After the removal of the adrenal tumor she experienced mood swings, crying jags, depression, and an inability to sleep. She continues to suffer from insomnia, depression and pain, which adversely affects her ability to work efficiently. She also suffers from back pain which has a high probability of continuing. I do not find that she currently has any carcinoma or is suffering from

Cushing syndrome, nor do I find that there is a reasonable probability of the carcinoma metastasizing. Garrie has also suffered a deterioration of the jaw bone with subsequent tooth loss.

Avram started his employment with IBM in 1970 and had received consistent advances from a technician to a position of senior designer. By 1981, however, he was desirous of leaving IBM and going into business for himself. At that time the marriage had been strained for a couple of years and Garrie was receiving marriage counselling. However, repeated fights and arguments continued. Some joint counselling was entered into sometime prior to 1981. This was done on Garrie's initiative in order to preserve the marriage. In 1981, prior to Avram leaving IBM, which he did on his own accord, the parties entered into a joint

business operation -- the opening of a delicatessen in a shopping center. They entered into this jointly with the understanding that this was a way for Avram to leave IBM and become independent. The business operation was not successful. The bulk of the work -- food preparation, personnel management, meeting the public -- was done by Garrie. Avram handled the financial matters. In late 1982, shortly after Garrie's surgery, Avram left IBM to be at the restaurant full time. At that time the only medical insurance the parties had was what IBM provided. While Garrie was concerned because of lack of medical insurance -- if Avram left IBM -- she did not object thereto. Avram's leaving IBM was irresponsible. The delicatessen business continued to deteriorate and in the Spring of 1983, Avram took a job selling

hearing aids, a job to which he was not suited. Garrie, because of her illness, was unable to be active in the business between March and June 1982. She was also restricted in physical activities. Avram assisted by trying to keep the business going, all to no avail. During her post-operative period, Avram was not reasonably supportive of her. In addition, money was borrowed from Garrie's mother for a total amount of $30,000.00. Other monies were borrowed from friends. In the Spring of 1983 they decided to sell the business, but the attempt to sell was unsuccessful. In August of 1983, Avram, although he had no employment proposals, left for Alaska for the purpose of securing employment and immediately thereafter the business was shut down as a result of Garrie being served eviction notice. When Garrie

informed Avram a violent disagreement between the parties ensued in which Avram, via a telephone conversation from Alaska, threatened to kill Garrie. I find that Avram deserted his family when the business was failing. After Avram left for Alaska, Garrie again sought counselling because she needed help coping.

Following the collapse of the business, the children worked, Garrie received unemployment insurance and also did some catering services and worked as a part-time cook and on other part-time jobs. The children continued to help by working at odd jobs and turning what money they earned into the household. Michael began to have trouble in school and the family situation was deteriorating. By January 1985 Garrie was seeking fuel assistance allowance, food stamps

and other aid programs. Garrie was still desirous of seeing whether or not the marriage could work and in January 1985 she went to Alaska where Avram had been working since February 1984 there she found that Avram had been living with another woman. That ended all prospects of a reconciliation.

Garrie left Vermont in July of 1985 and started work as an operator-manager of a student kosher kitchen in Hillel House at Harvard University. The children assisted her. She also did some individual catering. Her work at Hillel House was unsatisfactory to Hillel House, and she left in January of 1987. Her salary, including work outside Hillel House and at Hillel House averaged approximately $22,000.00 per year. She was unemployed from January 1987 until July of 1987 and she is now employed as a

transcriber for a Court reporter at 20 hours a week. She now earns approximately $120.00 a week. She is capable of doing some catering work and some secretarial work. However, I find that she is not capable of self-support.

Avram secured employment in Alaska in late October or early November of 1983. He sent no money back to Garrie until January 1984. He had several jobs until March 1984 when he finally received steady employment. He is presently employed as a camp utilities operator at Arco-Alaska. He has made a hobby out of computers and has since being in Alaska spent approximately $5,000.00 for computer and other electronic and communications equipment. This was money spent solely to satisfy his hobby of working with such equipment. The money could have been used to support his family.

Arnie is now 20 years old. Her relationship with Avram was strained in 1982 when Avram lost his temper and screamed at her, bruised her and called her trash. She was of great support to Garrie but became frustrated because of inability to participate in social activities. She turned in her earnings to the family household. Avram did not attend her high school graduation in 1985. She attended Stern College in New York as a freshman with approximately 20% of her tuition, board and room paid by Avram's mother. She worked the first summer after Stern College and then went to Bar-Ilan University in Israel on full scholarship. She returned in June 1987 and is now living with Garrie. While Arnie was at Stern and the University Avram contributed minimally to her needs. Arnie is desirous of continuing

her college education. She is capable of self-support.

Michael now lives with his father in Alaska where he is attending the University of Alaska. Until the parties separated his relationship with Garrie was normal. Garrie prepared him for his confirmation (Bar Mitzvah) at age 13 in accordance with Jewish ritual. She did the bulk of the preparatory work for the parties in connection with the Bar Mitzvah. Thereafter, it became severely strained. Sometime in 1986 he was sent to Garrie's mother's house in Florida. He completed high school while he was in Florida.

The marital home was purchased in 1970. A family room was constructed as an addition in 1974. This was done with money borrowed from the FHA and IBM, Avram's employer. Garrie continued to

live in the marital house with the children (until Michael went to Florida and Arnie went to Stern College) at which time she moved to Massachusetts. She leased the home for 10½ months and used the rentals for expenses for herself and the family. The home has since been sold.

Avram is now living in Alaska in a rented apartment, one-half of the costs of which are shared by a female companion. Avram has a gross weekly income of $1,051.83. He claims only himself as a deduction from his gross income. In addition, he has a savings plan deduction from his salary of $48.53 per week. His weekly living expenses, excluding alimony and child support, but including support of Michael ($123.85), are $457.68. Avram is fully capable of meeting the support of Garrie's needs.

Garrie's income, exclusive of support being received from Avram, is $127.00 per week. I find her weekly expense needs to be excessive, both as to rent (she has the ability to share with another person), telephone and automobile costs. I find her weekly expenses to be no greater than $500.000.

Avram's assets consist of the following:

1980 Honda Accord	$2,200.00
IBM pension	6,000.00
Household furnishings	1,000.00
Computer equipment	1,200.00
Hunting rifles	575.00
Bank account	1,330.00
Savings Account	300.00
For a total of	$13,105.00

Garrie's assets are as follows:

Household furnishings	1,000.00

She also has available to her a 1985 Honda Civic, which is in her mother's name, on which she is making the loan payments. The Civic is valued at $4,600.00.

The parties have joint assets as follows:

Cash settlement from marital home	$14,856.88
Anticipated income tax refund 1980 to 1984	14,000.00
Anticipated income tax refund 1985	8,446.00
Anticipated income tax refund 1986	7,000.00
Antique Samovar	700.00
Antique Oak table	675.00
Restaurant equipment	4,500.00
Total of joint assets	$49,175.88

Avram's liabilities are as follows:

Loan against the 401K	$3,000.00
Loan from Harvey Blitz	3,000.00

Estimated attorney's fees	15,000.00
Total liabilities of	$21,000.00
Garrie's liabilities are as follows:	
Automobile loan	$ 4,500.00
Visa loan	950.00
Personal loan	800.00
Telephone obligation	435.00
Mass. Eye and Ear	85.00
A reserved credit account	1,500.00
Total liabilities of	$ 6,770.00
Plus, attorney's fees and disbursements	25,314.51
Making a total of	$32,084.51
The parties joint liabilities are:	
Brand	$30,000.00
FHA	3,600.00
The Stone	1,600.00
The accountants	4,855.00
IBM Credit Union	650.00
Internal Revenue Service	7,500.00

Saddie Klavan	5,000.00
Making a total of	$53,205.00

The Court does not regard monies that were to be set aside for the children's education to be a legal obligation of the parties to the children. The parties' joint liabilities exceed their joint assets.

Garrie's opportunity to acquire additional assets is minimal due to the poor prospects for any meaningful employment.

Avram is capable of acquiring further assets because of his technical skills and his increased employment opportunities.

ANALYSIS

Avram's abandonment of Garrie in times of crisis and his insensitivity to her problems led to an irretrievable breakdown of the marriage. He was unable

to cope with financial difficulties and this lead to an insurmountable burden placed upon Garrie even while she was supportive of his attempts to become financially independent. His failure to support her also contributed to the family breakup despite her trying to keep the family going. While the children were growing up she had been the primary support of the family. Both parties are of working age and Avram's opportunities for future acquisition of assets and improving his employment status will continue. He has no health problems. On the other hand, Garrie's opportunities are minimal, as she had physical problems, her administrative abilities are questionable and her ability to acquire future assets, and indeed, to earn a reasonable income, is doubtful.

Garrie will need support and maintenance for the rest of her life.

The delicatessen venture on the whole was ill-conceived and foolishly entered into but was a joint venture and I find both parties should remain jointly liable for the debts of this venture.

In order for Garrie to meet her needs she must be maintained on Avram's medical plan and in addition must receive no less than $400.00 per week.

Insofar as the Motion for Counsel Fees incurred the Court is of the opinion that many of the problems involved in this case are due to intransitiveness on the part of Avram. The Court, taking into consideration the experience of both counsel and co-counsel of Garrie, will award Garrie for counsel fees the sum of $5,000.00 to be paid by Avram in or

within six (6) months from the date hereof.

ORDER

I. Judgment is to enter in Garrie Joan Klavan on the grounds of cruel and abusive treatment.

II. Avram is to pay Garrie $400.00 forthwith and $400.00 each and every week hereafter beginning on Friday, February 12th, 1988, by way of wage assignment.

III. The money in their escrow account of approximately $14,000.00 is to be forthwith assigned and turned over to Garrie.

IV. Each party shall retain the personal property (including automobiles) in their respective possession.

V. Each party will retain whatever cash, stock, pension accounts, bank accounts now standing in their respective names.

VI. The parties shall retain their joint interest on business assets and in all monies due to the Internal Revenue Service.

VII. Avram shall pay Garrie in or within six (6) months from the date hereof the sum of $5,000.00 as attorney's fees.

VIII. Avram shall maintain Garrie and the children on his medical health insurance coverage program so long as they are eligible without additional cost to them. He shall at all times keep Garrie covered to no less extent than she is presently covered and shall be responsible for payment of one-half of her reasonable uninsured medical, dental and hospital expenses upon receipt of validated invoices which shall be promptly rendered.

IX. Garrie shall remain or be reinstated as primary beneficiary of Avram's present life insurance policies. No encumbrances shall be put upon said insurance policies and Garrie shall be given such evidence, as may be reasonably required by her, of the policy remaining in full force and effect. The said Avram will advise the insurer to notify Garrie of any prior notice of cancellation.

DATED: February 10, 1988

/s/
Sumner Z. Kaplan, Justice
Probate & Family Court